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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,227	07/30/2003	Thomas M. DiMauro	3518.1015-000	8291
21005	7590	06/22/2009	EXAMINER	
HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133			SHAFER, SHULAMITH H	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: THOMAS M. DIMAURO, MOHAMED ATTAWIA, HASSAN SERHAN, MARTIN A. REYNOLDS, MELISSA GRACE, SUDHAKAR KADIYALA, DAVID URBHANS, SCOTT BRUDER, GREGORY COLLINS, LAURA J. BROWN, JEFF GEESIN, PAMELA L. PLOUHAR,

Application 10/630,227
Appeal 2009-001906
Technology Center 1600

Mailed: June 22, 2009

Before DALE M. SHAW, *Chief Appeals Administrator.*

ORDER REMANDING APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on August 18, 2008. On November 25, 2008, a Docketing Notice was mailed, and Appeal No. 2009-001906 was assigned. A review of the application has revealed that the application was not ready for an appeal. Accordingly, the application is herewith being remanded to the Examiner. The matter requiring attention is identified below.

Grounds of Rejection: *Ex parte Lemoine*

A review of the file finds that both Appellants and the Examiner are of the mistaken belief that all individual claims in an application must be twice rejected to be appealable. However, in *Ex parte Lemoine*, the Board of Patent Appeals and Interferences held that when an *application* is twice rejected *all* claims become appealable. See 46 USPQ2d 1420 (BPAI 1994); MPEP § 1204. Clarification of the record is required.

Therefore, the application is remanded to the Examiner to hold Appellants' Appeal Brief, filed December 5, 2007, defective. The Examiner is to vacate the Examiner's Answer mailed March 10, 2008.

The Appellants are to file a substitute Appeal Brief which clearly addresses all grounds of rejection to be reviewed on appeal as set forth in the Office Action mailed June 27, 2006. The Examiner is to generate a new Examiner's Answer which addresses all contested issues of patentability raised in Appellants' substitute Appeal Brief.

CONCLUSION

Accordingly, it is

ORDERED that the application is remanded to the Examiner:

- 1) to hold the Appeal Brief filed December 5, 2007, defective;
- 2) to vacate the Examiner's Answer mailed March 10, 2008;
- 3) for Appellants to file a substitute Appeal Brief for the reasons set forth above;
- 4) to consider Appellants' substitute Appeal Brief;
- 5) to generate a new Examiner's Answer for the reasons set forth above; and

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6) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/saw

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